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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Part 1

[Docket No. APHIS-2015-0008]

RIN 0579-AE68

### Privacy Act Regulations

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Department of Agriculture (USDA) is proposing to amend its Privacy Act regulations to exempt a system of records, Smuggling Interdiction and Trade Compliance (SITC) National Information Communication Activity System (SNICAS), USDA/APHIS-21, from certain provisions of the Privacy Act. USDA is further proposing to amend its Privacy Act regulations to reflect an administrative change to the list of system of records that are exempt from certain provisions of the Privacy Act.

**DATES:** We will consider all comments that we receive on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Enter APHIS-2015-0008 in the Search field. Select the Documents tab, then select the comment button in the list of documents.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2015-0008, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov> or in our reading room, which is located in room 1620 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** Ms. Tonya Woods, Director, Freedom of Information Act and Privacy Act Staff, 4700 River Road Unit 50, Riverdale, MD 20737; (301) 851-4076.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Privacy Act of 1974, as amended, 5 U.S.C. 552a, governs the means by which an agency collects, maintains, uses, and disseminates information about individuals that is maintained in a “system of records.” A system of records is any group of records under the control of an agency from which information about an individual is retrieved by the name, identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act generally grants individuals the right to access Privacy Act records maintained by an agency about themselves, as well as the right to request amendment of those records if they are not accurate, relevant, timely, or complete. The Privacy Act also allows the head of a Federal agency to promulgate rules to exempt a system of records from certain provisions of the Privacy Act, if the system of records contains “investigatory material compiled for law enforcement purposes, other than material within the scope of [5 U.S.C. 552a(j)(2)]: Provided, however, that if any individual is denied a right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in

confidence, or, prior to the effective date of this section [September 27, 1975], under an implied promise that the identity of the source would be held in confidence.” 5 U.S.C. 552a(k)(2).

The U.S. Department of Agriculture’s (USDA) Animal and Plant Health Inspection Service (APHIS) is proposing to exempt a system of records, Smuggling Interdiction and Trade Compliance (SITC) National Information Communication Activity System (SNICAS), USDA/APHIS-21, from certain provisions of the Privacy Act in order to avoid interference with law enforcement functions. USDA also proposes to update the list of systems exempt from certain provisions of the Privacy Act in accordance with 5 U.S.C. 552a(k)(2) to reflect administrative changes to USDA/APHIS-1.

#### USDA/APHIS-1

As an administrative matter, this proposal will update the list of previously exempt systems to reflect the agency combining two system of records under Investigative and Enforcement Records Regarding Regulatory Activities, USDA/APHIS-1. In a notice published in the *Federal Register* on November 16, 2001 (66 FR 57698-57700, Docket No. 99-024-1)<sup>1</sup>, USDA announced the combination of three system of records (Plant Protection and Quarantine Program-Regulatory Actions, USDA/APHIS-1; Veterinary Services Programs-Animal Quarantine Regulatory Actions, USDA/APHIS-3; and Veterinary Services Programs-Animal Welfare and Horse Protection Regulatory Actions, USDA/APHIS-4) into one system of record: the Investigative and Enforcement Records Regarding Regulatory Activities, USDA/APHIS-1. The reason for combining the system of records was to bring all of the records concerning investigation and enforcement together. USDA’s Privacy Act regulations were not previously amended to reflect this consolidation. Accordingly, USDA proposes to modify the list of exempt APHIS systems to reflect the consolidation.

#### USDA/APHIS-21

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<sup>1</sup> To view the notice, go to: <https://www.govinfo.gov/content/pkg/FR-2001-11-16/pdf/01-28727.pdf>.

USDA also proposes to exempt Smuggling Interdiction and Trade Compliance (SITC) National Information Communication Activity System (SNICAS), USDA/APHIS-21, from certain provisions of the Privacy Act of 1974, as amended, 5 U.S.C 552a. In a notice published elsewhere in this issue of the *Federal Register*, (Docket No. APHIS-2014-0062)<sup>2</sup>, APHIS is publishing a new system of records, entitled Smuggling Interdiction and Trade Compliance (SITC) National Information Communication Activity System (SNICAS), USDA/APHIS-21, to maintain a record of activities conducted by the agency pursuant to its mission and responsibilities authorized by the Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*); the Animal Health Protection Act (AHPA, 7 U.S.C. 8301 *et seq.*); and the Honey Bee Act (7 U.S.C. 281 *et seq.*). The purpose of the system is to record data and information about APHIS' Smuggling Interdiction and Trade Compliance activities nationwide. As described in that notice, portions of this system could reveal the identity and contact information of a witness or person who has submitted a complaint concerning potential alleged violations and violations by persons who are subject to the PPA, AHPA, and the Honey Bee Act.

Because this system contains the identity and contact information for witnesses and people who have submitted complaints concerning potential violations by persons who are subject to the acts relevant to the system of records, USDA proposes to exempt this system of records from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

Paragraph (c)(3) of 5 U.S.C. 552a requires agencies to make the accounting of each disclosure of records available to the individual named in the record upon his or her request. However, release of certain accounting of disclosures could alert an individual who may be under investigation to the existence of the investigation and that he or she is the subject to an investigation. The release of such information to the subject of an investigation could provide him or her with information as to the nature of the investigation, compromise the investigation

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<sup>2</sup> To view the notice, go to [www.regulations.gov](http://www.regulations.gov) and enter APHIS-2014-0062 in the Search field.

and any witnesses or people who submitted complaints, and lead to improper influencing or endangerment of these individuals.

Based on 5 U.S.C. 552a(d), (e)(4)(G) and (e)(4)(H), and (f), agencies are required to provide notice and disclosure of individuals that a system contains records pertaining to the individual, as well as providing rights of access and amendment. We believe that granting access to certain records in the previously listed systems could inform the subject of an investigation of the existence of that investigation, the nature and scope of the information and evidence obtained, the identity of witnesses and individuals who have provided information, and could provide information to enable the subject to avoid detection. The release of such information to the subject of an investigation could also lead to improper influencing or endangerment of these individuals.

Paragraph (e)(1) of 5 U.S.C. 552a requires an agency to maintain information about an individual only to the extent that such information is relevant or necessary. In terms of information that is related to an investigation, it is not always possible to know in advance what information is relevant and necessary for an investigation, and this information may contain information from witnesses or people who have submitted complaints that may inadvertently convey the identity of the source of information to the subject.

Paragraph (e)(4)(I) of 5 U.S.C. 552a requires an agency to provide public notice of the categories of sources of records in the system. The application of this section could disclose information provided by sources and could cause sources to refrain from providing information because of fear of reprisal or fear of breach of promise(s) of anonymity and confidentiality. This could compromise USDA's ability to conduct investigations and to identify and detect violators of the acts relevant to the listed system of records.

Executive Orders 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. This proposed rule would not impose a requirement for small businesses to report or keep records as a result of any of the provisions contained in this rulemaking. The exemptions to the Privacy Act apply to individuals, not to entities covered under the Regulatory Flexibility Act.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### **List of Subjects in 7 CFR Part 1**

Administrative practice and procedure, Agriculture, Antitrust, Blind, Claims, Concessions, Cooperatives, Equal access to justice, Federal buildings and facilities, Freedom of information, Lawyers, Privacy.

Accordingly, we propose to amend 7 CFR part 1 as follows:

## **PART 1—ADMINISTRATIVE REGULATIONS**

1. The authority citation for part 1, subpart G, continues to read as follows:

**Authority:** 5 U.S.C. 301 and 552a; 31 U.S.C. 9701.

2. Section 1.123 is amended by revising the entries under the heading “Animal and Plant Health Inspection Service” to read as follows:

**§ 1.123 Specific exemptions.**

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ANIMAL AND PLANT HEALTH INSPECTION SERVICE

Investigative and Enforcement Records Regarding Regulatory Activities, USDA/APHIS-1.

Veterinary Services Programs-Records of Accredited Veterinarians, USDA/APHIS-2.

Smuggling Interdiction and Trade Compliance (SITC) National Information Communication Activity System (SNICAS), USDA/APHIS-21.

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Done in Washington, DC, this 6<sup>th</sup> day of July 2022.

**Gary Washington,**

*Chief Information Officer,*

*United States Department of Agriculture.*

[FR Doc. 2022-14707 Filed: 7/8/2022 8:45 am; Publication Date: 7/11/2022]